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11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA  
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14 SHAWN CAWLEY, ) 3:11-cv-00565-HDM-VPC  
15 Plaintiff, )  
16 vs. ) ORDER ADOPTING  
17 OFFICER GOOD, et al., ) MAGISTRATE JUDGE'S  
18 Defendants. ) REPORT AND RECOMMENDATION  
19 \_\_\_\_\_ )

20 The court has considered the report and recommendation of the  
21 United States Magistrate Judge (#42) filed on April 4, 2013, in  
22 which the magistrate judge recommends that this court enter an  
23 order granting defendant Good's motion for summary judgment (#30).  
24 Plaintiff objected to the report and recommendation (#43), and  
25 defendant Good responded (#44). The court has considered the  
26 pleadings and memoranda of the parties and other relevant matters  
27 of record and has made a review and determination in accordance  
28 with the requirements of 28 U.S.C. § 636 and applicable case law,

1 and hereby **ADOPTS AND ACCEPTS** the report and recommendation of the  
2 United States Magistrate Judge (#16).

3 The court notes as an initial matter that plaintiff's  
4 opposition to Good's motion for summary judgment contains numerous  
5 factual assertions irrelevant to the single claim in this action -  
6 deliberate indifference to the plaintiff's serious medical need.  
7 Those assertions have not therefore been considered in deciding the  
8 motion for summary judgment. In addition, the opposition contains  
9 several factual assertions that are unsupported by any evidence in  
10 the record. Those assertions are insufficient to create an issue  
11 of fact and have likewise not been considered.

12 Under the circumstances of this case, in which the plaintiff  
13 was conscious, able to communicate clearly and concisely, and did  
14 not appear to be in acute distress (Def. Mot. Summ. J. Exs. 1 & 4),  
15 any delay in medical treatment was not unreasonable and is  
16 insufficient to establish that Good acted with deliberate  
17 indifference to plaintiff's serious medical needs. *See Berry v.*  
18 *Bunnell*, 39 F.3d 1056, 1057 (9th Cir. 1994) (absent evidence that  
19 minor delays in medical treatment caused harm, there was no  
20 violation of the Eighth Amendment); *Cramer v. Target Corp.*, 2011 WL  
21 5873401, at \*17 (E.D. Cal. 2011) (unpublished opinion) (finding  
22 that a two-hour delay for a broken clavicle did not violate the  
23 Eighth Amendment because the plaintiff had not shown the delay  
24 exacerbated his injury or caused him harm, and noting that  
25 "[d]elays of longer than two hours, particularly for conditions  
26 that are not life-threatening, are almost routinely experienced in  
27 emergency rooms across the country."). In addition, plaintiff  
28 provides no evidence that he suffered substantial harm as a result

1 of any delay. See *Wood v. Housewright*, 900 F.2d 1332, 1335 (9th  
2 Cir. 1990) (only delays that cause substantial harm violate the  
3 Eighth Amendment).

4 Plaintiff continues to assert that Good would not allow REMSA  
5 to take him to the hospital even though plaintiff wanted to go with  
6 them. The evidence, however, plainly contradicts this assertion.  
7 REMSA's records state that it was plaintiff who "did not wish to go  
8 to the hospital with health care providers" and refused transport.  
9 (Def. Mot. Summ. J. Ex. 4).

10 Plaintiff also claims that Good's motion for summary judgment  
11 was untimely. This argument is without merit. Pursuant to the  
12 scheduling order in this case and Federal Rule of Civil Procedure  
13 6(1)(C), the motion was timely filed.

14 Finally, plaintiff suggests that he has filed motions to  
15 compel that have yet to be ruled on. The record reflects no such  
16 motions are pending or have ever been filed.

17 In accordance with the foregoing, defendant Good's motion for  
18 summary judgment (#30) is hereby **GRANTED**. The clerk of the court  
19 shall enter judgment in favor of Good and against plaintiff.

20 **IT IS SO ORDERED.**

21 DATED: This 30th day of April, 2013.

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24 UNITED STATES DISTRICT JUDGE